

OFFICIAL FILE  
ILLINOIS COMMERCE COMMISSION  
STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

ORIGINAL

RURAL ELECTRIC CONVENIENCE )  
COOPERATIVE, CO., and SOYLAND )  
POWER COOPERATIVE, INC., )

Complainants, )

vs. )

CENTRAL ILLINOIS PUBLIC SERVICE )  
COMPANY d/b/a AMEREN CIPS, )

Respondent. )

CENTRAL ILLINOIS PUBLIC SERVICE )  
COMPANY d/b/a AMEREN CIPS, )

Counter-claimant, )

v. )

RURAL ELECTRIC CONVENIENCE )  
COOPERATIVE, CO., and SOYLAND )  
POWER COOPERATIVE, INC., )

Counter-respondents. )

DOCKET NO: 01-0675

CHIEF CLERK'S OFFICE  
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COMMERCE COMMISSION

**ANSWER, AFFIRMATIVE DEFENSE AND COUNTERCLAIM**

NOW COMES Respondent/Counter-claimant, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, d/b/a AmerenCIPS ("CIPS"), and for its Answer to the Complaint of RURAL ELECTRIC CONVENIENCE COOPERATIVE CO. ("RECC") and SOYLAND POWER COOPERATIVE, INC. ("Soyland"), states as follows:

**COUNT I**

1. CIPS admits that RECC is an electric supplier within the meaning of the Act, but lacks information or belief as to RECC's financing and thus, denies the balance of Paragraph 1.

2. CIPS admits that Soyland is an electric supplier within the meaning of the Act, but lacks information or belief as to Soyland's business or financing and thus, denies the balance of Paragraph 2.

3. CIPS admits the allegation of Paragraph 3.

4. CIPS admits that it and RECC are parties to the Agreement attached as Exhibit 1, but objects to RECC's inclusion of legal argument as to the Agreement's scope and extent and moves to strike same.

5. CIPS admits the allegation of Paragraph 5.

6. CIPS admits that RECC and Soyland are parties to the contract attached as Exhibit 3, but denies and moves to strike the remaining allegations of legal conclusions as to the contract's requirements or obligations.

7. CIPS admits that RECC is a member distribution cooperative of Soyland, but lacks information and belief as to the remaining allegations of Paragraph 7, and, accordingly, denies the same.

8. CIPS denies the allegations of Paragraph 8, and moves to strike Paragraph 8 in its entirety as irrelevant and immaterial to RECC's Complaint herein.

9. CIPS lacks information or belief as to the allegations of Paragraph 9 and denies same and further moves to strike Paragraph 9 in its entirety as irrelevant and immaterial to RECC's Complaint herein.

10. CIPS denies the allegation of Paragraph 10 and moves to strike Paragraph 10 in its entirety as irrelevant and immaterial to RECC's Complaint herein.

11. CIPS denies the allegations of Paragraph 11.

12. CIPS denies the allegations of Paragraph 12.

13. CIPS admits that the Crown III Mine has constructed a borehole in the area described, but denies that the borehole is located in Macoupin County and denies the balance of Paragraph 13.

14. CIPS admits that the Crown III Mine borehole lies in an area designated as RECC on the Appendices to RECC Exhibit 1, but denies the balance of Paragraph 14.

**COUNT II**  
***(Claim Under the Service Area Agreement, Section 2***  
***and Territory Maps Being Appendices 1 to 5)***

1-14. CIPS restates and incorporates by reference, as if fully set forth herein, its responses to Paragraphs 1-14 of Count I as Paragraphs 1-14 of Count II.

15. CIPS denies the allegations of Paragraph 15.

16. CIPS admits that it continues to furnish service to the Freeman United Crown III Mine, whose operations the Illinois Commerce Commission (the "Commission") characterized as a "continuously moving underground distribution system" in its Order of February 17, 1982, in Docket No. ESA 187, but denies the balance of Paragraph 16.

17. CIPS denies the allegations of Paragraph 17 and moves to strike Paragraph 17 in its entirety as irrelevant and immaterial to RECC's Complaint herein.

*WHEREFORE*, CIPS moves for the dismissal of Count II and for an Order striking RECC's prayer for temporary service on the ground that RECC declined to request a hearing thereon at a hearing conducted by the Commission on February 26, 2002.

**COUNT III**  
***(Claim Under Section 5 of the Act)***

1-14. CIPS restates and incorporates by reference, as if fully set forth herein, its responses to Paragraphs 1-14 of Count I as Paragraphs 1-14 of Count III.

15. CIPS denies that the “Freeman Mine Lime Injection/Air Shaft” constitutes an “electrical load”, and denies the balance of Paragraph 15.

16. CIPS denies the allegations of Paragraph 16 and moves to strike and dismiss same as irrelevant and immaterial to any claim under §5 of the ESA.

17. CIPS denies the allegations of Paragraph 17.

18. CIPS admits that it continues to furnish service to the Freeman United Crown III Mine, whose operations the Commission characterized as a “continuously moving underground distribution system” in its Order of February 17, 1982, in Docket No. ESA 187, but denies the balance of Paragraph 18.

19. CIPS denies the allegations of Paragraph 19.

20. CIPS denies the allegations of Paragraph 20 and moves to strike Paragraph 20 in its entirety as irrelevant and immaterial to Count III of RECC’s Complaint herein.

*WHEREFORE*, CIPS moves for the dismissal of Count III and for an Order striking RECC’s prayer for temporary service on the ground that RECC declined to request a hearing thereon at a hearing conducted by the Commission on February 26, 2002.

***COUNT IV***  
***(Claim Under Section 8 of the Act)***

1-14. CIPS restates and incorporates by reference, as if fully set forth herein, its responses to Paragraphs 1-14 of Count I as Paragraphs 1-14 of Count IV.

15. CIPS denies that the “Freeman Mine Lime Injection/Air Shaft” constitutes an “electrical load”, and denies the balance of Paragraph 15.

16. CIPS denies the allegations of Paragraph 16 and moves to strike and dismiss same as irrelevant and immaterial to any claim under §8 of the ESA.

17. CIPS denies that RECC has lines and facilities which are or can be made adequate to serve the Crown III Mine and moves to strike RECC's allegation of "authority to connect to lines and facilities existing on July 2, 1965" as irrelevant and immaterial to any claim under §8 of the Act.

18. CIPS denies the allegations of Paragraph 18.

19. CIPS denies the allegations of Paragraph 19.

20. CIPS denies the allegations of Paragraph 20.

21. CIPS denies the allegations of Paragraph 21.

22. CIPS denies the allegations of Paragraph 22 and moves to strike Paragraph 22 in its entirety as irrelevant and immaterial to Count IV of RECC's Complaint herein.

*WHEREFORE*, CIPS moves for the dismissal of Count IV and for an Order striking RECC's prayer for temporary service on the ground that RECC declined to request a hearing thereon at a hearing conducted by the Commission on February 26, 2002.

***COUNT V***  
***(Claim Under Section 1 of the Agreement)***

1-14. CIPS restates and incorporates by reference as if fully set forth herein its responses to Paragraphs 1-14 of Count I as Paragraphs 1-14 of Count V.

15. CIPS admits that Paragraph 15 accurately quotes a portion of Paragraph 1 of the RECC/CIPS Service Area Agreement.

16. CIPS denies the allegations of Paragraph 16.

17. CIPS denies the allegations of Paragraph 17.

18. CIPS denies the allegations of Paragraph 18 and moves to strike RECC's claim of an "absolute right" as inconsistent with the Commission's duty to act in the public interest under §8 of

the Act.

19. CIPS denies the allegations of Paragraph 19.

20. CIPS denies the allegations of Paragraph 20.

21. CIPS denies the allegations of Paragraph 21 and moves to strike and dismiss same as irrelevant and immaterial to Count V of RECC's Complaint herein.

*WHEREFORE*, CIPS moves for the dismissal of Count V and for an Order striking RECC's prayer for temporary service on the ground that RECC declined to request a hearing thereon at a hearing conducted by the Commission on February 26, 2002.

***COUNT VI***  
***(Claim Under Section 2 of the Agreement***  
***and Territory Maps Being Appendices 1 to 5)***

1-14. CIPS restates and incorporates by reference as if fully set forth herein its responses to Paragraphs 1-14 of Count I as Paragraphs 1-14 of Count VI.

15. CIPS denies the allegations of Paragraph 15 of the Complaint.

16. CIPS denies the allegations of Paragraph 16 of the Complaint.

17. CIPS denies the allegations of Paragraph 17 of the Complaint.

18. CIPS denies the allegations of Paragraph 18 of the Complaint and moves to strike RECC's claim of an "absolute right" as inconsistent with the Commission's duty to act in the public interest under §8 of the Act.

19. CIPS denies the allegations of Paragraph 19.

20. CIPS denies the allegations of Paragraph 20 and moves to strike and dismiss same as irrelevant and immaterial to Count VI of RECC's Complaint herein.

*WHEREFORE*, CIPS moves for the dismissal of Count VI and for an Order striking RECC's

prayer for temporary service on the ground that RECC declined to request a hearing thereon at a hearing conducted by the Commission on February 26, 2002.

***COUNT VII - XI***  
***(Claims of Soyland)***

CIPS makes no answer to Counts VII-XI and moves to strike and dismiss Counts VII-XI in their entirety on the grounds that Soyland does not allege anywhere that “it should be permitted to serve any customer or premises” within the meaning of Section 7 of the ESA and, consequently, Soyland has no standing to file a Complaint, and the Commission has no jurisdiction to grant any relief to Soyland under the ESA.

***FIRST AFFIRMATIVE DEFENSE***  
***(Res Judicata)***

1. RECC filed a Verified Complaint against CIPS with the Commission pursuant to the Act in Docket No. ESA 187 on July 10, 1978. (“RECC 1978 Complaint”).

2. RECC’s 1978 Complaint requested that the Commission determine that RECC, and not CIPS, was entitled to provide electric service to a proposed customer, the Freeman United Coal Mining Company, at an underground coal mine known as the Crown III Mine.

3. CIPS filed an Answer to the RECC Complaint, the parties presented evidence and briefs, and the Commission entered its Order on February 17, 1982, denying the relief sought by RECC and authorizing CIPS “to provide electric service at 34.5KV to the Crown III Mine of the Freeman United Coal Mining Company . . .” (a true and exact copy of the Commission’s Order is attached hereto as CIPS’ Exhibit No. 1).

4. The Commission’s Order authorizing and directing CIPS to furnish electricity to Crown III made, *inter alia*, the following findings:

- (a) Crown III's main surface facilities are located in Section 1 of Nilwood Township in Macoupin County;
- (b) Freeman United had acquired 810 surface acres and 17,500 acres of subsurface mineral rights for its Crown III mining operation;
- (c) that Crown III's "anticipated load during the first year of normal operation will require, in accordance with accepted engineering practices, that the load be supplied through or connected to an extension of a line having a voltage of 34.5 KV" within the meaning of Paragraph 2 of RECC and CIPS' Service Area Agreement, so that service entitlement would not be determined by reference to the parties' territorial maps;
- (d) that RECC's July 2, 1965 low voltage service to the residence and farm of Marvin Moore, whose location included 372 of the 810 surface acres acquired by the Crown III Mine, was "inadequate to invoke the priority provisions of Section 5 of the Act as to new customers at a location requiring service by a line having voltage of 34.5 KV or higher";
- (e) that RECC made no claim of entitlement to serve Crown III pursuant to the proximity provisions of Section 8 of the Act and RECC conceded that it did not have any right to serve Crown III pursuant to Section 8; and,
- (f) that the Freeman United Crown III Mine operation constituted a "continuously moving underground distribution system."

5. Thereafter, in a decision rendered on October 11, 1983, the Appellate Court of Illinois, Fourth District, affirmed the Commission's Order in favor of CIPS. Rural Electric Convenience Cooperative Company v. Illinois Commerce Commission and Central Illinois Public Service Company, 118 Ill.App.3d 647, 454 N.E.2d 1200, 73 Ill. Dec. 951, reh. den., November 4, 1983.

6. The Appellate Court found in 1983 that "[t]he mine itself will extend over 17,500 acres at depths of up to two and one-half miles". 73 Ill. Dec. 951, 952.

7. The Appellate Court decision characterized RECC's 1978 Complaint as seeking "the right to serve the Crown III Mine", 73 Ill. Dec. 951, 955, and characterized the Commission's Order as "granting CIPS the right to serve the Crown III Mine". 73 Ill. Dec. 951, 956.

8. The Crown III Mine continues to mine the same 17,500 subterranean acres of mineral rights recognized by the Commission in its 1982 Order.

9. Pursuant to the authority granted by the Commission's Order in Docket No. ESA 187 as affirmed by the Appellate Court, CIPS has continuously furnished all electric service for use by Freeman United Crown III Mine since the mine's inception.

10. On or about February 1, 2000, Freeman United requested that CIPS furnish 34.5 KV service at a delivery point near an additional borehole in Section 7, Township 11 North, Range 5 West in Montgomery County, Illinois.

11. On May 16, 2000, CIPS verbally notified RECC of Freeman's request and of CIPS' intent to continue to serve Crown III at the point requested by Freeman United .

12. The Crown III underground mining operation that utilizes electricity furnished by CIPS at the new borehole in sum and substance constitutes the same mining operation and electric consumer that CIPS has served since 1978 and that this Commission and the Appellate Court authorized CIPS to serve in Docket No. ESA 187.

13. The Commission decided the question of whether RECC or CIPS should be authorized to serve the Crown III Mine in Docket No. ESA 187 in 1982, and the Commission's decision therein, as affirmed by the Appellate Court, constitutes *res judicata* and bars and/or estops RECC from prosecuting its Complaint herein.

14. RECC's Complaint herein constitutes an attempt to relitigate matters of law and fact

that were finally adjudicated on the merits in favor of CIPS in Docket No. ESA 187.

*WHEREFORE*, Respondent/Counter-claimant CIPS respectfully prays the Commission make and enter its Order dismissing RECC's Complaint and denying any relief sought therein.

### ***COUNTERCLAIM***

NOW COMES Respondent, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, d/b/a AmerenCIPS ("CIPS"), and pleading alternatively for its Counterclaim to the Complaint of RURAL ELECTRIC CONVENIENCE COOPERATIVE CO. ("RECC") and SOYLAND POWER COOPERATIVE, INC. ("Soyland"), states and alleges as follows:

#### ***COUNT I (Res Judicata)***

1-14. CIPS restates and incorporates by reference, as if fully set forth herein, its responses to Paragraphs 1-14 of its First Affirmative Defense as Paragraphs 1-14 of Count I of its Counterclaim.

15. All of the facts and legal issues that were or could have been raised in connection with RECC's 1978 Complaint have been litigated and finally decided in favor of CIPS.

*WHEREFORE*, Respondent/Counter-claimant CIPS respectfully prays the Commission make and enter its Order dismissing RECC's Complaint and denying any relief sought therein.

#### ***COUNT II (Section 8 of the ESA)***

1. In the alternative to Count I above, service to the Freeman Crown III borehole in Section 7, Township 11 North, Range 5 West in Montgomery County, Illinois, constitutes "electrical load of a prospective consumer" that requires 34.5KV service from a 1965 line in accordance with accepted engineering practices within the meaning of the last proviso clause of Paragraph 2 of the

Service Area Agreement.

2. CIPS has existing adequate lines in proximity to the Crown III Mine's Section 7 borehole.

3. Freeman United prefers that CIPS furnish the proposed service.

4. CIPS first began providing service in the area in 1913.

5. CIPS has substantially assisted in creating the demand for the proposed service.

6. CIPS can furnish the proposed service with a smaller amount of additional investment than RECC.

7. Both the public interest and the public policy underlying the ESA justify an order authorizing CIPS to furnish the proposed service.

*WHEREFORE*, CIPS prays the Commission make and enter its Order authorizing CIPS to furnish service to the Crown III Mine via the borehole recently created in Section 7.

***COUNT III***  
***(Paragraph 5, Service Area Agreement)***

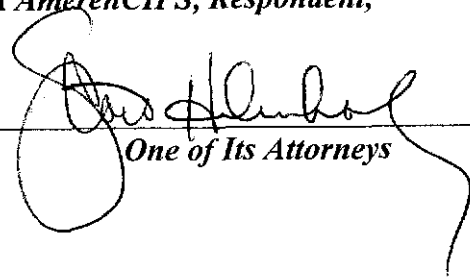
1-14. CIPS restates and incorporates by reference, as if fully set forth herein, its responses to Paragraphs 1-14 of its First Affirmative Defense as Paragraphs 1-14 of Count III of its Counterclaim.

15. The Crown III Mine constitutes a "consume[ ] the constructing party [CIPS] is otherwise entitled to serve" within the meaning of Paragraph 5 of the RECC/CIPS Service Area Agreement.

*WHEREFORE*, Respondent/Counter-claimant CIPS respectfully prays the Commission make and enter its Order dismissing RECC's Complaint and denying any relief sought therein.

**CENTRAL ILLINOIS PUBLIC SERVICE COMPANY**  
**D/B/A AmerenCIPS, Respondent,**

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Scott C. Helmholz", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

*One of Its Attorneys*

Scott C. Helmholz  
Sorling, Northrup, Hanna,  
Cullen & Cochran, Ltd.  
Suite 800 Illinois Building  
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*Verification*

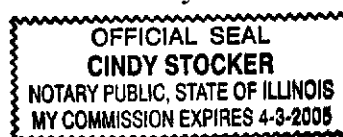
STATE OF ILLINOIS           )  
  ) ss  
COUNTY OF SANGAMON       )

*Jon Carls*, being first duly sworn upon his oath, deposes and states that he is the **Rate Administration Supervisor** of **Ameren Services** in the above entitled cause of action, that he has read the above and foregoing Response by him subscribed and that the same is true in substance and in fact except as to those matter which are stated to be on information and belief and as to those matters he believes them to be true.

By: *Jon R. Carls*  
          **JON CARLS**  
Its:   **Rate Administration Supervisor**

Subscribed and sworn to before me this 12<sup>th</sup> day of **March, 2002**.

*Cindy Stocker*  
          **Notary Public**



***Proof of Service***

The undersigned hereby certifies that a copy of the foregoing ***Answer, Affirmative Defense and Counterclaim of Central Illinois Public Service Company*** was served by placing same in a sealed envelope addressed to:

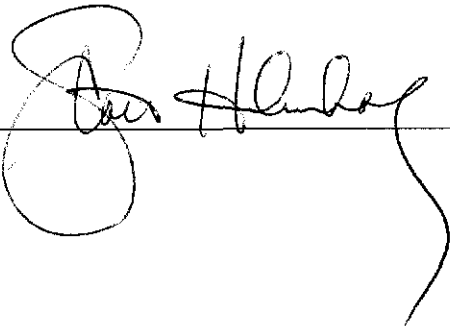
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Greg Rockrohr  
Engineering Staff  
Illinois Commerce Commission  
527 E. Capitol Street  
Springfield, IL 62705

and by depositing same in the United States mail in Springfield, Illinois, on the ***12<sup>th</sup>*** day of ***March, 2002***, with postage fully prepaid.

A handwritten signature in black ink, appearing to read "Greg Rockrohr", is written over a horizontal line. The signature is stylized with a large, looping initial "G" and a long, sweeping tail that extends downwards and to the right.

0335903.006

3/12/2002SCHers